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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ferguson

Serial No.: 09/852,519

Group No.: 1617

Filed: May 10, 2001

Examiner: S. Sharareh

For: MORE EASILY VISUALIZED PUNCTUM PLUG CONFIGURATIONS

PETITION TO EXAMINE CLAIMS 9-21

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicant, Donald Gillespie, through his duly authorized counsel, hereby respectfully requests that claims 9-21 be examined in the above-captioned matter, on the grounds the Examiner in this case inappropriately withdrew them from consideration pursuant to 37 CFR §1.142(b).

Applicant's representative is well aware that some Examiners commonly restrict out claims, since it presumably makes their workload easier and derives more revenues for the Patent Office. Given this tendency, Applicant's representative is careful to draft claims in a manner that will avoid restriction, and it is believed that claims 9-21 should be examined in this case for that reason. Claim 9 is an independent "system" claim that makes specific reference to "the punctum plug of claim 1," and "at least one optical element ...". The Examiner argues that "this is not persuasive because claim 9 is a "methodology that can be practiced by other systems where no optical element is required." It appears to Applicant that the Examiner is incorrect on several grounds. First, claim 9 is not a methodology, and second, it requires an optical element by virtue of the claim language. Even though the application "admits" that other systems may be used where no optical element is present, the precise language of the claims cannot be ignored in favor of a restriction requirement.

For these reasons, Applicant respectfully requests that claims 9-21 be examined in this case without further delay.

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A fee of \$130 is enclosed herewith in accordance with 37 CFR §1.17(h).

Respectfully submitted,

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Date: May 27, 2003